Supreme Court, U.S.
FILED

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No_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

WILBURTA T. HOLDEN LIVING TRUST,
Petitioner,
vs.
JOINT CITY-COUNTY BOARD OF
TAX ASSESSORS,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

Moreton Rolleston, Jr.
Suite 1870 - Riverwood 100
Atlanta, Georgia 30339
770-850-1816
Attorney for Petitioners

41 pp

QUESTIONS PRESENTED FOR REVIEW

1.

Whether the 1991 and 1992 tax reappraisals, which were made by the Respondents (Assessors) of Holden's real estate and of all other real estate located in Fulton County, Georgia and City of Atlanta, Georgia, deny Holden of due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and by the Georgia Constitution.

2.

Whether the appraisal methology adopted by the Assessors violated the Fifth and Fourteenth Amendments to

the Constitution of the United States and the Constitution of the State of Georgia.

3.

Whether the trial judge should have been disqualified because he was a taxpayer in Fulton County and City of Atlanta and $30,000 of his salary was paid by Fulton County and whether Holden was denied due process and equal protection of the same Constitutions because the trial judge was not qualified to preside.

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TO THE COURT OF APPEALS OF THE

STATE OF GEORGIA

The opinion of the Court of Appeals of Georgia which is set forth in the Appendix (A-1), affirmed the judgment of the trial court. The trial court's opinion (B-1) granted

a motion for a directed verdict.

The grounds upon which jurisdiction of this Court is invoked is the denial of due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and the denial of equal protection of the laws under the Fourteenth Amendment.

The date of entry of the judgment of the Court of Appeals is August 15, 1995.

The jurisdiction of this Court to review the order of the Court of Appeals of Georgia is invoked under 28 U.S.C. §1254(11).

CASE HISTORY

The original complaint was filed in the Fulton Superior Court of Georgia and the constitutional issue was tried without a jury. The trial court directed a verdict in favor of the Assessors. This verdict was appealed to the Supreme Court of Georgia who transferred it to the Court of Appeals of Georgia. The Court of Appeals upheld the trial court on August 15, 1995. Holden then filed a petition for writ of certiorari in the Georgia Supreme Court which was denied on November 9, 1995. Notice of intention to file a petition for writ of certiorari in this court was given the Georgia

Court of Appeals on November 15, 1995.

Article 6, Section 6, Paragraph 2 of the Georgia Constitution provides that the Georgia Supreme Court shall exercise exclusive appellant jurisdiction in all cases involving the constitutions of the State of Georgia and the United States and that was why the appeal was originally filed in the Supreme Court of Georgia. The Court of Appeals had jurisdiction in this matter because the Supreme Court of Georgia said so and transferred the case to that court.

STATEMENT OF CASE

Fulton County and the City of Atlanta directed Respondents to employ Cole-Layer-Trumble Company (CLT) to prepare reappraisals for the year of 1991 of all real estate in the County and the City. CLT conducted such a reappraisal of all 160,000 residences and 70,000 commercial properties. The results of the 1991 reappraisals were used by the City and County for the basis of the preparation of the 1991 and 1992 tax bills. The principal thrust of this case is that the people employed by CLT to make the reappraisals were so inexperienced and untrained that they inevitably produced a flawed

reappraisal. The persons employed by CLT had no formal education in real estate, had no actual experience with real estate or appraisals and had not even been enrolled in any of the courses required by Georgia law for people engaged in appraisal work.

We have set out below a brief description of each CLT employee by name and occupation in which that person was engaged prior to their employment regarding the re-appraisals.

Name	Occupation
Beckett	Clerk with Federal Reserve
Allen	Dispatch Clerk
Bohart	Construction Laborer

Brown	Secretary at Emory University Clinic
Cole	School Superintendent, Grades 7-12
Conty	Home Construction Repairman
Cox	Photographer
DeSilva	Bookkeeper
Ellsworth	Receptionist
Desmarines	"Lister" - Other information indicated a Lister is one who lists physical characteristics of a house
Dew	Self-employed
Farmer	Ramp service employee of Eastern Airlines
Folherts	Built grain bins in

	Missouri
Grunger	Tax consultant
Gec	On job training to learn real estate
Gogarty	Sold books door to door
Hendricks	Accounting clerk
Jackson	Retail sale of photographic supplies
Junior	Kept inventory records for Delta
James	Accounting Clerk
Lee	Inventory control clerk with Eastern
Morgan	Clerk for collection agency
Pyle	Set up tables at restaurant

Rakerh	Bookkeeper in retail music shop
Robinson	U.S. Postal Clerk
Schultz	Youth Director at Forrest Hills Baptist Church
Showers	Worked for temporary employment company
Smith	Telephone magazine salesman
Sonshein	In process of securing license to sell real estate
Spruell	Retail clothing sales
Welak	Prepared produce in grocery store

The state of origin and the

number of CLT employees from each state is shown as follows:

8 from Ohio

4 from Massachusetts

4 from Kansas

3 each from New York, New Jersey, Florida, North Carolina Missouri and Pennsylvania

2 each from California, Texas, Michigan, Tennessee and Louisiana

1 each from South Carolina, West Virginia, Alabama, Illinois, Wisconsin, Mississippi, Nebraska, Washington, D.C.

2 from New Guinea

1 each from Jamaica and Ethiopia

17 from Georgia

Therefore, 56 of CLT's employees

come from 22 states other than Georgia. There was no evidence that the persons from these 22 states knew anything about Georgia real estate.

It is not hard to understand that a person from Ohio, Massachusetts, New York, New Jersey, California, New Guina, Ethiopia and Jamaica have no idea what land is presently valued at in Fulton County in the City of Atlanta. Can you imagine these same people trying to evaluate correctly real estate in San Francisco, New Orleans or New York City?

27,262 taxpayers requested reviews of their 1991 tax appraisals. CLT and the County agreed that 15,026

were in error. That means that 55% of the appraisals which were reviewed, were in error. There were 45,000 appeals of the 1992 tax appraisals of which 11,000 were incorrect. The changes of appraisals of these 11,000 parcels by the Board of Equalization resulted in a reduction in the tax digest in the amount of $3.4 billion.

The reappraisals made by CLT were erroneous and illegal for the following reasons:

(a) A large part of Fulton County is hilly and rolling country with many streams and small rivers. The entire northwest side of Fulton County is bordered by the Chatt-

ahoochee River which separates Fulton County from Cobb, Douglas, Forsyth, Coweta and Gwinnett Counties. This stretch of the River is approximately 75 miles in length. The Corps of Engineers of the U.S. Army has established a 50 and 100 year flood plain along the Chattahoochee River in Fulton County as well as in the adjoining counties. No structures can be erected in said flood plains without the permission of the Corps of Engineers. Said area is also subject to the (U.S.) Wet Lands Act and to the Metropolitan River Protection Act, Official Code of Georgia (O.C.G.A.) §12-5-440, (also known as the Chattahoochee River

Corridor Act); both of which give governmental authorities power to restrict the use of land in the flood plain. The Chattahoochee River Corridor Act provides that nothing can be built in Fulton County within 1,000 feet of the Chattahoochee River without the approval of the Atlanta Regional Commission and the City of Atlanta and/or Fulton County. A property owner can not disturb the land within 100 feet of the Chattahoochee River and can not increase run off water by virtue of new construction without the permission of the governmental authorities. The Chattahoochee River Protection Act has been upheld as a

constitutional exercise of police power for the general welfare and to protect the source of drinking water for all the counties that border on the Chattahoochee River, including those downstream of Fulton County (**Pope vs. County of Fulton**, 240 Ga. 177) (240 SE2d 241). There are large tributaries of the Chattahoochee which flow in Fulton County, such as Peachtree Creek and Nancy Creek, and all of these tributaries have flood plains which have been established by governmental authorities, including the U.S. Corps of Engineers. When CLT prepared the 1991 reappraisals they did not consider the effect of the flood

plains on the parcels of land included therein. The man in charge of CLT appraisals (Copeland) testified he had never seen this flood plain information. The Chairman of the Board of Tax Assessors in Fulton County testified he had seen it but was not familiar with it. Parcels affected by the flood plains are in the thousands in number.

(b) Many parcels of land in Fulton County are landlocked, meaning that they have no street frontage and there is no access to the property from a public street. Where a parcel was landlocked, CLT did not consider the effect of its condition

on the value of such landlocked properties.

(c) There were sales of parcels of land in Fulton County in 1990 and prior to March 1991 when the 1991 reappraisals were mailed. These prior sales were at prices less than the appraised values established in the 1991 assessments. CLT did not investigate prior sales of the same properties and established the appraised value higher than the actual sales prices that were available for comparison.

(d) CLT made appraisals of properties which were higher than other properties of comparable value. In some cases of land which had been

developed for apartments and condominiums, CLT appraised all condominiums and apartments at the same value even though the units would vary from one to three bedrooms and vary in many other aspects.

(e) CLT did not adequately inspect the properties they were appraising. CLT made errors regarding square footage of the buildings, type of construction, the number of bedrooms, whether or not they had basements and other physical characteristics.

(f) CLT appraised each parcel by placing a value on the land and placing another value on the improvements. In some cases CLT

placed a value on the improvements when there were no actual improvements constructed on the land.

(g) CLT simply ignored the zoning regulations of Fulton County and City of Atlanta as to the effect that those regulations had upon the use or development of the property. In the process of preparing the 1991 reappraisal, CLT established over 800 neighborhoods and in each neighborhood established a value in terms of square footage regardless of zoning regulations, topography and use of the land. The R-1 zoning is the highest residential zoning in the City of Atlanta. Copeland testified he did not know what R-1 meant.

(h) The method employed by CLT in preparing the data base for their computers was faulty, inappropriate and did not establish a fair market value in a fair and equitable manner. CLT was negligent in the preparation of the 1991 reappraisals which are so flawed that they can not be used by the Tax Assessors and the Tax Commissioner to prepare accurate tax bills based on the fair market value.

The appeal procedure adopted by the Assessors regarding commercial property was different from that followed by the Assessors with regard to residential property. Under Georgia law, when a residential owner disagreed with the appraisal of the

Assessors, he filed an appeal under the then current valid statute. Holden appealed to the Board of Equalization. But when a commercial taxpayer disagreed with the appraisal of the Assessors, they were afforded a hearing before the Assessors and the commercial taxpayer and the Assessor then reached an agreement without an appeal to the Board of Equalization or the courts. This was the procedure used for the office buildings at the following addresses on Peachtree Street, Nos. 330, 999, 1200, 1360, 191 and 133. The favorable treatment given the commercial taxpayers is illustrated by the following information:

330 One Peachtree Center - Portman

Loan - $378,000,000

Appraisal - $104,991,900

Permit Cost - $122,012,270

999 At 10th St.

Loan - $94,000,000

Appraisal - $68,990,800

1200 Promeade I

Appraisal - $35,250,000

Permit Cost - $76,755,100

1360 Midtown Plaza

Loan - $55,000,000

Appraisal - $22,304,400

Permit Cost - $41,890,650

191 Twin Towers

Loan - $290,000,000

Appraisal - 149,202,300

Permit Cost - $153,410,337

133 Georgia Pacific

Loan - $170,000,000

Appraisal - $133,854,000

The above information shows that the appraisals agreed upon by the Assessors were not only less than the permit cost issued by the City of Atlanta for the construction of the buildings but was considerably less than the actual mortgages placed on the properties when they were built. There are three Assessors and the Tax Assessors' Office has six assistants that handle 60,000 commercial properties only. These are the six people who reviewed the commercial taxpayers' appeals.

LEGAL BASIS

We rely on the law principles set out in the following Georgia Code, Opinion of the Georgia Supreme Court, the Fifth and Fourteenth Amendments to the Constitution of the United States and the Georgia Constitution.

O.C.G.A. §48-5-306 reads in pertinent part as follows:

> "The Board shall see that all taxable property within the county is assessed and returned at its fair market value and that the fair market values as between the individual taxpayers are fairly and justly equalized so that each taxpayer

shall pay as nearly as possible only his appropriate share of taxes."

Delta Air Lines, Inc. vs. Coleman, Tax Commissioner, et al, 219 Ga.12 131 SE2d 768 held on page 19 as follows:

"The discrimination in taxation which the equal protection clauses forbid is the failure of the taxing authorities to tax all like property which is subject to taxation equally or to tax the property of one owner and exempt like property belonging to another owner."

Fifth Amendment to the United States Constitution reads in part

as follows:

> "Nor (shall any person) be deprived of life, liberty or property without due process of law."

Fourteenth Amendment to the United States Constitution reads in pertinent part as follows:

> "Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section I, Paragraph 2 of the **Constitution of the State of Georgia** provides in pertinent part as follows:

"No person shall be denied the equal protection of the law."

CONCLUSIONS

The court erred in refusing to declare the 1991 reappraisal of real estate in Fulton County and the City of Atlanta to be in violation of the Constitutions of the State of Georgia and the United States.

The employees of C.L.T. had neither the training nor experience to qualify them to produce the necessary data to be fed into the computer process. Since the data they collected contained so many errors and omitted so many considerations, the final appraisals by

the computer were necessarily erroneous. The computer printout is never better than the information supplied to it.

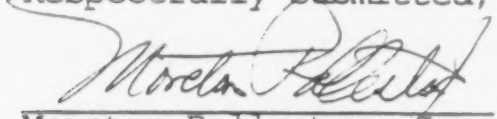
These inexperienced and untrained C.L.T. employees were the ones who produced the data for the computer. There was no way under the sun for people with their inexperience to evaluate properly and correctly a $100,000 or a $1,000,000 piece of residential property or Multi-million Georgia Pacific Building. Yet they were the ones who did it.

The valuations in the 1991 reappraisal would result in a majority of the taxpayers paying more

than his or her fair, just and appropriate share of taxes and thus would result in the confiscation of each taxpayer's property through excessive taxation in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and in violation of Article 1, Section 1, Paragraph 1 and Paragraph 2 of the Constitution of Georgia. Said unfair and improper valuations constitute an illegal taking of property without due process of law

and a violation of equal protection of the laws.

Respectfully submitted,



Moreton Rolleston, Jr.
Attorney for Petitioner
Ga. Bar No. 613700

Suite 1870- Riverwood 100
3350 Cumberland Circle, N.W.
Atlanta, Georgia 30339
770-850-1816

APPENDIX

Appendix A

Second Division

Birdsong, P.J.,

Johnson and Smith, JJ.

August 15, 1995

Not to be officially

Reported

In the Court of Appeals of Georgia

A95A1752. Wilburta T. Holden Living Trust v. Joint City-County Board of Tax Assessors.

Bi-121

BIRDSONG, Presiding Judge.

In this case the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment.

(2) No reversible error of law appears and an opinion would have no precedential value.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Johnson and Smith, JJ., concur.

Appendix B

IN THE SUPERIOR COURT OF

FULTON COUNTY

STATE OF GEORGIA

Filed In Office

Sep 22 1994

Deputy Clerk, Superior

Court, Fulton County, Ga

WILBURTA T. HOLDEN

LIVING TRUST,

Plaintiff, CIVIL ACTION

vs. FILE NO.E-20705

JOINT CITY-COUNTY BOARD

OF ASSESSORS,

Defendant.

JUDGMENT

This action having been tried before the Court and the issues having been duly tried before a jury and the jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the verdict of the jury shall be the judgment of this Court, and that the fair market value as of January 1, 1993 of the Plaintiff's property, Parcel I.D. No. 17-0201-LL-082-0-N3-93, in Fulton County, Georgia is $317,000.00.

Defendant is hereby ordered to recalculate the ad valorem tax owing on the fair market value of $317,000.00 and to refund to

Plaintiff the difference between the tax payable on the prior valuation from which Plaintiff appealed and the tax payable upon $317,000.00, if any.

The complaint also raised a constitutional question involving denial of due process and equal protection of the law as guaranteed by the Fifth and Fourteenth Amendments to the constitution of the United States and by the constitution of the State of Georgia. This issue was tried before the Court without a jury. After hearing Plaintiff's witnesses and other evidence Defendant moved for a directed verdict with was granted in open court.

IT IS HEREBY ORDERED AND

ADJUDGED that Defendant's motion for directed verdict be an is hereby granted.

The Court further holds that there are no unresolved issues and nothing remains to be tried and that this is a final order of this Court.

This 22nd day of September, 1994.

/s/ Isaac Jenrette

ISAAC JENRETTE, Judge

Superior Court Fulton County

PREPARED BY:

/s/ Richard A. Carothers by

RICHARD A. CAROTHERS

Attorney for Defendant

BOYCE, EKONOMOU & ATKINSON

3575 Kroger Boulevard
Suite 180
Duluth, Georgia 30136
(404) 921-7048

CONSENTED AS TO FORM BY;

/s/ Moreton Rolleston by

MORETON ROLLESTON (with
express permission by
Richard A. Carothers)

3350 Cumberland Circle, NW
Suite 1870 Riverwood 100
Atlanta, Georgia 30339
(404)988-9300

Appendix C

C-1

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: November 09, 1995

Moreton Rolleston, Jr.
Suite 1870, Riverwood 100
3350 Cumberland Circle, N.W.
Atlanta GA 30339

Case No. S95C1884
WILBURTA T. HOLDEN LIVING TRUST
V. JOINT CITY-COUNTY BOARD OF
TAX ASSESSORS

COURT OF APPEALS CASE NO. A95A1752

C-2

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk